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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

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6 MARIO TREJO,

7 Plaintiff,

8 v.

9 CCDC, ET AL.,

10 Defendants.
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Case No. 2:19-cv-00342-APG-DJA

REPORT AND RECOMMENDATION

12 This matter is before the Court on *pro se* prisoner Plaintiff's Motion to Amend Complaint
13 (ECF No. 30), filed on February 10, 2021.

14 Plaintiff is a *pro se* prisoner in the custody of the Clark County Detention Center. He was
15 permitted to proceed *in forma pauperis* on July 22, 2019. (ECF No. 11). At that time, his
16 Complaint was screened by the District Judge assigned to this case pursuant to 28 U.S.C. §
17 1915A(a) and he was permitted to proceed on: a 14th Amendment inadequate medical care claim
18 against Defendants Nurse Jennifer, Nurse Nancy, and Doe medical staff (when Plaintiff learns
19 their identities). (*Id.*). On February 3, 2020, the Court granted in part and denied in part
20 Plaintiff's Motion to Substitute and permitted Nancy Goodman to be substituted. (ECF No. 19).

21 Then, on February 7, 2020, Plaintiff was notified that no proper proof of service had been
22 filed as to Defendants Dr. Weiner, Nurse Jennifer, and Nancy Goodman and the dismissal
23 deadline as to those Defendants was set for March 8, 2020. (ECF No. 20). As a result, Plaintiff
24 requested an extension of time to serve. (ECF No. 21). The Court granted his request and
25 summons was issued as to Nancy Goodman. (ECF Nos. 22-23). The Summons was returned
26 unexecuted as to Nancy Goodman on July 1, 2020. (ECF No. 24).

27 Again, Plaintiff sought another attempt of service for Nancy Goodman at the same
28 address, CCDC, because he alleges that she was on vacation during the first attempt. The Court

1 permitted a second attempt of service by the United States Marshal's Service. (ECF No. 26).
2 Summons was returned unexecuted again. (ECF No. 28). The Clerks' Office issued a notice that
3 this case may be dismissed pursuant to Fed.R.Civ.P. 4(m) on February 10, 2021 to the extent that
4 service was not executed.

5 In the instant Motion, Plaintiff yet again seeks another extension of time to complete
6 service. However, he fails to cite to any points and authorities to justify why granting him any
7 more time would be effective as he has been unable to complete service since the complaint was
8 permitted to survive screening back on July 22, 2019. Additionally, the Court has already granted
9 two extensions of time to complete service. This time, Plaintiff does not show any diligence in
10 utilizing those extensions. Further, he does not demonstrate that he has any plan to be successful
11 in completing service if a third extension were to be granted. As such, the Court will recommend
12 that his request be denied and this case be dismissed for lack of service.

13 Moreover, Plaintiff appears to request that this case be severed into three separate cases
14 against Dr. Weiner, Nurse Jennifer, and Nancy Goodman. Plaintiff fails to cite to any points and
15 authorities that justify severing this case simply because he states claims against three different
16 defendants. The Court permitted this case to survive screening as one case due to it containing
17 allegations against defendants involving the same nucleus of operative facts.

18 Therefore, the Court will recommend that Plaintiff's request for a third extension of time
19 to complete service and to sever the case into three new cases be denied. Given that Plaintiff has
20 failed to complete service by the February 10, 2021 deadline, the Court will also recommend that
21 it be dismissed without prejudice.

22 **RECOMMENDATION**

23 IT IS THEREFORE RECOMMENDED that Plaintiff's Motion to Amend Complaint
24 (ECF No. 30) be **denied**.

25 IT IS FURTHER RECOMMENDED that this case be dismissed without prejudice
26 pursuant to Fed.R.Civ.P. 4(m).

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NOTICE

Pursuant to Local Rule IB 3-2 any objection to this Report and Recommendation must be in writing and filed with the Clerk of the Court within (14) days after service of this Notice. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985), *reh'g denied*, 474 U.S. 1111 (1986). The Ninth Circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

DATED: February 16, 2021.



DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE